

Honorable Barbara J Rothstein

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MR
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

RAYMOND LEICH, a resident of Florida,
derivatively on behalf of EVERGREEN
STATE RESTAURANT CORP ,

Plaintiff,

vs.

CRAIG and JANE DOE EDWARDS,
Washington residents, and their
marital community,

Defendants,

and

EVERGREEN STATE RESTAURANT
CORP , a Washington corporation,

Nominal Defendant

CRAIG R EDWARDS, on his own behalf
and on behalf of EVERGREEN STATE
RESTAURANT CORP ,

Counterclaimant and
Third-Party Plaintiff,

vs

NO C03-0108BJR

MOTION TO ENFORCE
ACCESS TO CORPORATE
INFORMATION

NOTE ON MOTION CALENDAR
May 16, 2003

CV 03-00108 #00000046

46

ORIGINAL

1 RAYMOND M LEICH, an individual,)
 2 CLIFFORD L JONES and LINDA JONES,)
 and their marital community, and)
 3 EVERGREEN RESTAURANT VENTURES,)
 INC , a Washington corporation,)
 4)
 5 Counterclaim Defendant and)
 Third-Party Defendants)
 6)

7 Craig Edwards, the Chairman of the Board of Directors and the majority
 8 shareholder of Evergreen State Restaurant Corporation ("Evergreen"), seeks enforcement
 9 of the commitment made by Cliff Jones and Ray Leich, the minority shareholders of
 10 Evergreen, that all the shareholders will have equal access to Evergreen's books and
 11 records
 12

13 On February 26, 2003, the Court held a hearing on Leich's motion for a
 14 temporary restraining order barring a special shareholders meeting scheduled by Mr
 15 Edwards to consider certain amendments to Evergreen's bylaws One of the proposed
 16 amendments would have ensured all shareholders equal access to Evergreen's books and
 17 records
 18

19 ARTICLE XII

20 ACCESS TO INFORMATION

21 Each of the shareholders will have the right to
 22 unlimited access to the originals of all books and records of
 23 the Corporation and any other information within
 24 Evergreen's possession or control Such right of access,
 25 includes, but is not limited to, unlimited access to
 26 information and materials in the possession or control of

1 attorneys, accountants, banks and other persons and entities
2 who have provided services for Evergreen ¹

3 The Court granted a TRO barring the scheduled shareholders meeting, but
4 addressed the issue of equal access to corporate information as follows

5 THE COURT I don't see anything wrong with the
6 amendment requiring him to get corporate information
7 That is not going to hurt anybody That should be done

8 MR HOFF Nor do we, Your Honor

9 THE COURT (It) shouldn't be opposed

10 MR HOFF I agree

11 THE COURT So, why don't you drop that part of your
12 TRO?

13 MR HOFF We will be happy to agree or we'll simply agree
14 that we will give them any of the information they want, as
15 we have previously That is a disputed item, too

16 THE COURT I don't want to hear a dispute about it I want
17 him to get any corporate information he needs

18 MR HOFF We agree, Your Honor ²

19 The commitment to grant equal access to corporate information, as
20 provided in the above quoted bylaw, was unequivocal Unfortunately, Jones and Leich
21 have refused to honor that commitment
22

23
24 ¹ A copy of the proposed First Amendment to Bylaws of Evergreen State Restaurant Corp is Exhibit 2 to the
Second Affidavit of Spencer Hall

25 ² Transcript of Hearing on Motion for Temporary Restraining Order on February 26, 2003 before the
26 Honorable Barbara Jacobs Rothstein, United States District Judge, at the United States Courthouse, Seattle,
Washington ("Transcript"), p 23 A complete copy of the Transcript is Exhibit 1 to the Second Affidavit of
Spencer Hall

1 Jones and Leich have barred Mr Edwards from Evergreen's place of
2 business They insist that any review of books and records must occur off-site They
3 further insist that all requests for access to corporate information must be processed
4 through legal counsel Except for his own expense records, Mr Edwards is not allowed
5 to see original documents Instead, he is charged for copies of any documents he wishes
6 to see
7

8 Jones and Leich reluctantly agreed that Mr Edwards could review the
9 originals of his own expense records (It is difficult to deal with copies of pencil entries
10 and small pieces of paper) Initially, Jones took Mr Edwards' expense records to a
11 conference room in a building adjacent to Evergreen's offices and doled them out to
12 Mr Edwards, one at a time. He would not give Mr. Edwards a second report until
13 Mr Edwards handed back the first This humiliating arrangement continued for three
14 sessions.
15

16 The sessions were stopped while the parties participated in settlement
17 mediation Following the unsuccessful mediation, Mr. Edwards sought to resume review
18 of his expense records (The accountants retained by Jones and Leich spent more than
19 100 hours working with the same records) Jones now takes the position that he no
20 longer has time for the procedure previously used His current position is that
21 Mr Edwards may review the originals of his own expense records only at the offices of
22 Jones' attorneys. Jones insists that Mr. Edwards be constantly monitored by a paralegal
23 and that Mr Edwards pay the paralegal's hourly rate
24
25
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1 Since the February 26 hearing, counsel for Mr Edwards have incurred
2 copying charges in excess of \$7,000 to access information Most of these charges would
3 have been unnecessary if Mr Edwards had access to Evergreen's books and records
4 Mr Edwards also has incurred unnecessary legal fees because all information requests
5 have had to be processed through legal counsel
6

7 To increase the economic pressure on Mr Edwards, Jones has refused to
8 distribute any of Evergreen's income since this lawsuit was filed Evergreen is
9 Mr Edwards' principal source of income He is being denied the funds he needs to pay
10 for this litigation and other necessary financial commitments Meanwhile, Jones and
11 Leich used more than \$70,000 of corporate funds to pay for the accounting report they
12 had prepared to support their claims Whenever Jones and Leich use corporate funds to
13 pay for anything that benefits them, Mr Edwards, as the majority shareholder, bears
14 approximately 70 percent of the cost (Mr Edwards intends to file a separate motion
15 regarding Jones' refusal to distribute Evergreen's income)
16
17

18 Jones and Leich's audacity is breathtaking They are disregarding the
19 Court's admonition to provide equal access to Evergreen's books and records There is
20 no legal basis for Jones and Leich to deny Mr Edwards, the Chairman of the Board of
21 Directors and the majority shareholder, access to Evergreen's place of business There is
22 no legal basis for them to deny Mr Edwards access to any information relating to
23 Evergreen Their disregard for Mr Edwards' rights is what led to the proposed
24 amendments to the bylaws
25
26

1 Jones and Leich claim that their treatment of Mr. Edwards is justified
 2 because their accounting report (the "Hagen Report") purportedly shows that
 3 Mr Edwards cannot be trusted Moss Adams, a regional accounting firm, has reviewed
 4 the Hagen Report and relevant documents to which Mr Edwards has been permitted
 5 access Moss Adams has concluded that the criticisms in the Hagen Report are either
 6 incorrect or have no material impact Moss Adams' preliminary findings regarding each
 7 of the subject areas in the Hagen Report are summarized in a memorandum by W Arthur
 8 King, CPA and Managing Partner of Moss Adams³

11 Jones and Leich have no right to take over a corporation in which they are
 12 minority shareholders under any circumstances They certainly have no right to do so
 13 based on accounting disputes about which independent accounting firms disagree This
 14 is particularly true given that Leich, acting as a CPA hired by Evergreen, approved the
 15 accounting treatments at issue


17 Mr Edwards asks that the Court enter an order providing that all the
 18 shareholders of Evergreen will have equal access to Evergreen's books and records as
 19 provided in the proposed amendment to the bylaws of Evergreen

21 This motion is supported by the Second Affidavit of Craig R Edwards and
 22 the Second Affidavit of Spencer Hall A proposed order is submitted with this motion

26 ³ A copy of the Memorandum from W Arthur King, dated March 20, 2003, is Exhibit 3 to the Second Affidavit of Spencer Hall

1 DATED this 30th day of April, 2003

2 HALL ZANZIG ZULAUF
3 CLAFLIN McEACHERN PLLC

4
5
6 By 
7 Spencer Hall
8 WSB No 6162
9 Attorneys for Defendants, Counterclaimant
10 and Third-Party Plaintiff
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